

NEVA F. RILEY

IBLA 84-910

Decided October 25, 1985

Appeal from decision of Wyoming State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application. W-78219.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings--Oil and Gas Leases: Known Geologic Structure--Oil and Gas Leases: Noncompetitive Leases

Pursuant to sec. 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226(b) (1982), lands within the known geologic structure of a producing oil or gas field may be leased only by competitive bidding. Where the lands are determined to be within a known geologic structure prior to issuance of a lease, a simultaneous noncompetitive oil and gas lease application for such lands must be rejected.

APPEARANCES: Neva F. Riley, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Neva F. Riley has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated August 10, 1984, rejecting her simultaneous oil and gas lease application, W-78219.

Appellant's application was drawn with first priority for parcel WY-4969 in the November 1981 simultaneous oil and gas lease drawing, which was held on December 21, 1981. Parcel WY-4969 is described as 320 acres of land situated in the N 1/2 sec. 28, T. 14 N., R. 92 W., Sixth principal meridian, Carbon County, Wyoming. By decision dated January 26, 1982, BLM dismissed a protest filed by Ellis R. Ferguson, another applicant for parcel WY-4969, challenging BLM's failure to include his application in the drawing. In Ellis R. Ferguson, 69 IBLA 352 (1982), aff'd, Ferguson v. Lieurance, Civ. No. C83-264-K (D. Wyo. May 1, 1984), the Board affirmed BLM's dismissal of Ferguson's protest.

In its August 1984 decision, BLM rejected appellant's application because, subsequent to the drawing but prior to issuance of a lease, BLM

had determined the land involved herein was situated within a known geological structure (KGS) of a producing oil or gas field and, thus, the land could only be leased for oil and gas by competitive bidding, pursuant to 43 CFR Subpart 3120. By memorandum dated January 19, 1982, the District Supervisor, Resource Evaluation, Geological Survey (Survey), had notified BLM that the W 1/2 NW 1/4 sec. 28, T. 14 N., R. 92 W., Sixth principal meridian, Carbon County, Wyoming, had been determined to be within a KGS, effective December 15, 1981. By memorandum dated May 24, 1982, the District Supervisor, Resource Evaluation, Minerals Management Service (which had assumed Survey's responsibilities in this regard), had notified BLM that the remaining lands in the N 1/2 sec. 28, T. 14 N., R. 92 W., Sixth principal meridian, Carbon County, Wyoming, had been determined to be within an addition to the Robbers Gulch Field undefined KGS, effective May 13, 1982.

In her statement of reasons for appeal, appellant does not challenge the KGS determinations but contends that it was unfair for BLM to accept lease applications, determine the priority of those applications in a drawing, and then refuse to issue a lease in response to the "winn[ing]" application on the basis of KGS determinations made after the drawing. Appellant states that "[a]ll KGS activity should have stopped once the drawing took place." Appellant states that, prior to the drawing, she was never informed by BLM that it could refuse to issue a lease upon a subsequent KGS determination, and that she would have received the lease prior to that determination in the absence of the Ferguson protest/appeal.

[1] Section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226(b) (1982), provides that lands which are within the KGS of a producing oil or gas field "shall be leased * * * by competitive bidding." See also 43 CFR 3100.3-1. It is well settled that where lands embraced in a noncompetitive oil and gas lease offer are determined to be within a KGS at any time prior to issuance of a lease, the lease offer must be rejected. Evelyn D. Ruckstuhl, 85 IBLA 69 (1985), and cases cited therein; 43 CFR 3112.5-2(b). 1/ BLM is also required to reject a simultaneous noncompetitive oil and gas lease application in such circumstances. 2/ McDonald v. Clark, No. 84-1700 (10th Cir. Aug. 28, 1985); Lloyd Chemical Sales, Inc., 82 IBLA 182 (1984); Lida R. Drumheller, 63 IBLA 290 (1982). The Department has no discretion to issue a noncompetitive oil and gas lease for KGS lands. McDade v. Morton, 353 F. Supp. 1006 (D.D.C. 1973), aff'd, 494 F.2d 1156 (D.C. Cir. 1974); Frederick W. Lowey, 76 IBLA 195 (1983).

1/ 43 CFR 3112.5-2(b) provides that:

"If, prior to the time a lease is issued, all or part of the lands in the offer are determined to be within a known geological structure of a producing oil or gas field, the offer shall be rejected in whole or in part as may be appropriate and the lease, if issued, shall include only those lands not within the known geological structure of a producing oil or gas field."

2/ Rejection is also mandated by 43 CFR 3112.5-1(a), which requires rejection of lease applications which do not meet "the requirements of Subpart 3112 of this title," including 43 CFR 3112.1-1(a). The latter regulation provides in relevant part that leasing under the simultaneous system applies to "all lands which are not within a known geological structure of a producing oil or gas field." (Emphasis added.)

Moreover, BLM does not obligate itself to issue a lease merely by selecting applications in the simultaneous system. As we said in Evelyn D. Ruckstuhl, *supra* at 72-73: "A drawing does not vest in a lease applicant a right, contractual or otherwise, to an oil and gas lease, but merely establishes the priority of filing. R. K. O'Connell, 85 IBLA 29 (1985); Joseph A. Talladira, [83 IBLA 256 (1984)]. McDade v. Morton, *supra* at 1010." See also McDonald v. Clark, *supra*; Schraier v. Hickel, 419 F.2d 663, 666 (D.C. Cir. 1969). The signing of an offer by an authorized BLM officer is the act that constitutes acceptance of the offer and creates a binding contract. Harry S. Hills, 71 IBLA 302 (1983); see 43 CFR 3112.6-1(a) (lease agreement signed by offeror constitutes "offer to lease").

Appellant argues that she was not aware, prior to the drawing, that her lease application could be rejected if the lands were later determined to be within a KGS. However, appellant is deemed to have known that a noncompetitive oil and gas lease could not be issued for land within a KGS and that a noncompetitive lease application for such land could be rejected at any time prior to issuance of a lease, under relevant statutes and duly promulgated regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947).

Therefore, we conclude that BLM properly rejected appellant's simultaneous oil and gas lease application.

Pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

James L. Burski
Administrative Judge

